

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 ORLANDO GUZMAN,

5 Plaintiff,

6 v.

7 WASHOE COUNTY,

8 Defendant.

Case No. 3:25-CV-00008-ART-CLB

REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹

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10 Before the Court is Plaintiff Orlando Guzman's ("Guzman"), application to proceed
11 *in forma pauperis*, (ECF No. 1), and civil rights complaint, (ECF No. 1-1). For the reasons
12 stated below, the Court recommends that Guzman's *in forma pauperis* application, (ECF
13 No. 1), be denied as moot, and his complaint, (ECF No. 1-1), be dismissed without
14 prejudice and without leave to amend.

15 **I. IN FORMA PAUPERIS APPLICATION**

16 A person may be granted permission to proceed *in forma pauperis* ("IFP") if the
17 person "submits an affidavit that includes a statement of all assets such [person]
18 possesses [and] that the person is unable to pay such fees or give security therefore.
19 Such affidavit shall state the nature of the action, defense or appeal and affiant's belief
20 that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d
21 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed
22 IFP, not just prisoner actions).

23 Pursuant to LSR 1-1: "Any person who is unable to prepay the fees in a civil case
24 may apply to the court for authority to proceed [IFP]. The application must be made on
25 the form provided by the court and must include a financial affidavit disclosing the

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27 ¹ This Report and Recommendation is made to the Honorable Anne R. Traum,
28 United States District Judge. The action was referred to the undersigned Magistrate
Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 applicant's income, assets, expenses, and liabilities."

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with
3 some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not "be absolutely
5 destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*,
6 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Guzman cannot pay the filing
8 fee. However, because the Court recommends that the complaint be dismissed, the Court
9 recommends that the motion to proceed IFP, (ECF No. 1), be denied as moot.

10 **II. SCREENING STANDARD**

11 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
12 provides, in relevant part, that "the court shall dismiss the case at any time if the court
13 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a
14 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant
15 who is immune from such relief." 28 U.S.C. § 1915A(b). A complaint is frivolous when
16 "it lacks an arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325
17 (1989). This includes claims based on legal conclusions that are untenable (e.g., claims
18 against defendants who are immune from suit or claims of infringement of a legal interest
19 which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
20 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th
21 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
22 standard applied in the context of a motion to dismiss under Federal Rule of Civil
23 Procedure 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which
24 requires dismissal where the complaint fails to "state a claim for relief that is plausible on
25 its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

26 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
27 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
28 accept as true all well-pled factual allegations, set aside legal conclusions, and verify

1 that the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S.
2 662, 679 (2009). The complaint need not contain detailed factual allegations, but must
3 offer more than “a formulaic recitation of the elements of a cause of action” and “raise a
4 right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is
5 taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies
6 to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
7 Still, a liberal construction may not be used to supply an essential element of the claim
8 not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is
9 appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice
10 of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v.*
11 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

12 **III. SCREENING OF COMPLAINT**

13 In his complaint, Guzman sues Defendant Washoe County under 42 U.S.C. §
14 1983. (See ECF No. 1-1.) Guzman’s complaint states he was arrested on September 20,
15 2023, and appeared in Justice Court on September 25, 2024 for an arraignment. (*Id.* at
16 5.) Guzman’s next court appearance was a “mandatory status conference” and not a
17 preliminary hearing, which should have been scheduled 15 days after Guzman’s
18 arraignment. (*Id.* at 4-5.) Guzman alleges that it is “standard procedure” for Washoe
19 County courts to presume a criminal defendant waives his right to preliminary hearing
20 unless a defendant specifies otherwise. (*Id.*) Thus, Guzman alleges that his right to due
21 process, right against “unduly long pretrial incarceration” and right to speedy trial have
22 been violated. (*Id.*) Guzman’s request for relief is to “provide a cease and [desist] order
23 to the Washoe County Courts and lawyers to order them to follow [the] law henceforth
24 and promptly schedule preliminary hearings instead of delaying with “status conferences.”
25 (*Id.* at 10.)

26 It appears that Guzman is asking the Court to intervene in ongoing state criminal
27 proceedings. However, the *Younger* abstention doctrine prevents federal courts from
28 interfering with pending state criminal proceedings even if there is an allegation of a

1 constitutional violation, unless there is an extraordinary circumstance that creates a threat
2 of irreparable injury. *Younger v. Harris*, 401 U.S. 37 (1971). The Supreme Court has
3 stated that “federal-court abstention is required” when there is “a parallel, pending state
4 criminal proceeding.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013); *see also*
5 *Heck v. Humphrey*, 512 U.S. 477, 487 n.8 (1994) (noting that when a state criminal
6 defendant brings a federal civil rights lawsuit while his criminal charges are pending,
7 abstention is “an appropriate response to the parallel state-court proceedings”).

8 To determine if *Younger* abstention applies, federal courts look to whether the
9 state criminal proceeding is “(1) ongoing, (2) implicate[s] important state interests, and
10 (3) provide[s] an adequate opportunity... to raise constitutional challenges.” *Herrera v.*
11 *City of Palmdale*, 918 F.3d 1037, 1044 (9th Cir. 2019) (internal quotation marks omitted);
12 *see also Younger*, 401 U.S. 37. The Ninth Circuit also requires that “[t]he requested relief
13 must seek to enjoin—or have the practical effect of enjoining—ongoing state
14 proceedings.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758
15 (9th Cir. 2014) (citing *AmehsourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir.
16 2007)). Because it appears Guzman’s criminal case is still pending, all prerequisites of
17 the *Younger* abstention doctrine are present. Guzman is the subject of an ongoing
18 criminal proceeding in state court that has not reached final adjudication. The State of
19 Nevada has an important interest in protecting the public through the prosecution of
20 criminal proceedings. Further, the state court criminal proceedings would afford an
21 opportunity for Guzman to raise the constitutional claims asserted in the Complaint.
22 Accordingly, the Court recommends that Guzman’s complaint be dismissed, without
23 prejudice, but without leave to amend.

24 **IV. CONCLUSION**

25 For good cause appearing and for the reasons stated above, the Court
26 recommends that Guzman’s application to proceed *in forma pauperis*, (ECF No. 1), be
27 denied as moot, and his complaint, (ECF No. 1-1), be dismissed without prejudice and
28 without leave to amend.

1 The parties are advised:

2 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
3 Practice, the parties may file specific written objections to this Report and
4 Recommendation within fourteen days of receipt. These objections should be entitled
5 "Objections to Magistrate Judge's Report and Recommendation" and should be
6 accompanied by points and authorities for consideration by the District Court.

7 2. This Report and Recommendation is not an appealable order and any
8 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
9 District Court's judgment.

10 **V. RECOMMENDATION**

11 **IT IS THEREFORE RECOMMENDED** that Guzman's application to proceed *in*
12 *forma pauperis*, (ECF No. 1), be **DENIED AS MOOT**;

13 **IT IS FURTHER RECOMMENDED** that Guzman's complaint, (ECF No. 1-1), be
14 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND**; and,

15 **IT IS FURTHER RECOMMENDED** that the Clerk of Court **ENTER JUDGMENT**
16 accordingly and **CLOSE** this case.

17 **DATED:** January 21, 2025.

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20 **UNITED STATES MAGISTRATE JUDGE**
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